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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1961

No. 372

TROY B. CADE, ET AL.,

Petitioners,

versus

CITY OF MONROE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

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INDEX.

	Page
OPINONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED	5
STATEMENT	8
HOW THE FEDERAL QUESTIONS ARE PRESENTED	16
REASONS FOR GRANTING THE WRIT	30
I. The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights	30
CONCLUSION	37
APPENDIX "A"	39
APPENDIX "B"	51

TABLE OF CASES.

City of Monroe v. Ducas, et al., 203 La. 974, 14 So. (2d) 781	34
Lanzetta v. New Jersey, 306 U. S. 451, 453	36
Mapp v. Ohio, 81 S. Ct. 1684 (1961)	31, 32

TABLE OF CASES—(Continued)

	Page
Napue v. Illinois, 360 U. S. 264, 271, 272	33
State v. Sanford, 203 La. 961, 14 So. (2d) 778 (1943)	36
State of Louisiana v. Bulot, et al., 175 La. 21, 142 So. 787	36
State of Louisiana v. Lillie Christine, Alias (Cat Girl), 239 La. 259, 118 So. (2d) 403	35, 36
State v. Gallin, 129 So. (2d) 4, 241 La. 321	33
Thompson v. City of Louisville, 362 U. S. 199	33, 34
Statutes:	
28 U. S. C. § 1257(3)	2
Louisiana Constitution (1921), Article 7, §36	5
Monroe City Code:	
Section 10-3	6
Section 10-6	6
Section 10-7	6, 7
Section 10-27	6, 7

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CITY OF MONROE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled case on May 18, 1962.

CITATIONS TO OPINIONS BELOW.

The opinions below are not reported. The Fourth District Court, Ouachita Parish, Louisiana, simply affirmed the judgment of the City Court of Monroe, Louisiana. (RT 47.) The City Court rendered a handwritten opinion which is set forth, *infra* pages 39-50. The Supreme

Court of Louisiana rendered a brief handwritten opinion which is set forth, *infra* page 30 and RT 76.

JURISDICTION.

The judgment of the Supreme Court of Louisiana was entered on May 18, 1962. The jurisdiction of this Court is invoked under 28 U. S. C., § 1257(3), petitioners claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States. Petitioners further claim that their rights have been violated as guaranteed by the First, Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED.

Petitioners, all Negro citizens of Ouachita Parish, Louisiana, all adhere to the religious faith of Islam and are commonly known as "Black Muslims." On Sunday, March 5, 1961, defendants were at the premises known as and numbered 1243 DeSiard Street, Monroe, Louisiana, for the purpose of worshipping in their religious faith of Islam. Chief of Police for the City of Monroe, Louisiana, Honorable James C. Kelly, along with other officers, visited these premises for the stated purpose of investigating this group of which he had a personal knowledge was subversive. Everything was peaceable and quiet when the officers arrived, according to his statement. The officers parked their automobile in front of the premises while one of the officers knocked on the door. After receiving no answer, the officer returned to the automobile and waited until other members of this group arrived, at which time he attempted to enter the door be-

hind them. The officer met opposition at this door, which was the front door of the building. Several officers proceeded to the door at the rear of the building and, after the rear door was torn open, entered the building, where some fighting took place. The officers admittedly had no warrant of arrest or search warrant of any kind. The officers seized several items of personal property and charged defendants with aggravated battery, attempting to commit a battery and disturbing the peace. There was no evidence of public alarm. There was no evidence of any disorder or disturbance of the peace except that which took place when the police officers forceably entered the temple. The items of personal property seized in this connection were used as evidence in the trial of this case against the defendants over their objection to prove the charges of aggravated battery and attempting to commit a battery. On the trial of this case defendants sought to call as one of their witnesses one James Gaines, and the Court refused to hear this witness under the provision of Section 36 of Article 7 of the Constitution of Louisiana. Defendants filed a motion for a new trial after conviction and sought to call Walter Mines and James Greggs as their witnesses in support of paragraph 15 of their motion for a new trial. The Court refused to hear these witnesses again under Section 36 of Article 7 of the Constitution of Louisiana. Under the circumstances, were petitioners deprived of rights protected by the:

1. Due process clause of the Fourteenth Amendment to the Constitution of the United States in that they were convicted on a record wherein there was no evidence at all to support the verdict of conviction?

2. Due process clause of the Fourteenth Amendment to the Constitution of the United States in that they were convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality?

3. The First Amendment to the Constitution of the United States guaranteeing the right of freedom of religious worship to all citizens of the United States?

4. The First Amendment to the Constitution of the United States guaranteeing all citizens the right of peaceable assembly?

5. The Fourth Amendment to the Constitution of the United States granting to all citizens the right to be free from unreasonable searches and seizures?

6. The due process clause of the Fourteenth Amendment to the Constitution of the United States in that no valid, legal or admissible evidence was received against the defendants which would tend to support a conviction of either charge against them?

7. The Fourteenth Amendment to the Constitution of the United States in that the seizures and arrests made violate the rights of defendants as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

8. The Fourteenth Amendment to the Constitution of the United States in that Section 10-27 of the City of Monroe Code, Ordinance Number 3263, is uncon-

stitutional on its face or in the alternative unconstitutional as used against these defendants?

9. The due process clause of the Fifth and Sixth Amendments to the Constitution of the United States in that defendants were denied the right to produce three witnesses to testify in their defense?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

1. The First Amendment to the Constitution of the United States.

2. The Fourth Amendment to the Constitution of the United States.

3. The Fifth Amendment to the Constitution of the United States.

4. The Sixth Amendment to the Constitution of the United States.

5. The Fourteenth Amendment to the Constitution of the United States.

6. Section 36 of Article 7 of the Constitution of Louisiana, 1921, as amended, Volume 2, page 372:

"Appellate Jurisdiction; trials de novo

"The district courts have appellate jurisdiction, except as otherwise provided in this Constitution, of the following cases: All appeals in civil

cases tried by justices of the peace within their respective districts; all appeals in civil cases tried in city or municipal courts within their respective districts where the amount in dispute, or the value of the movable property involved does not exceed one hundred dollars, exclusive of interest; all appeals from orders of justices of the peace requiring a peace bond; and all appeals from sentences imposing a fine or imprisonment by a mayor's court or by a city or municipal court. These appeals shall be tried de novo and without juries; but no evidence shall be admitted on the trial de novo which was not offered in the lower court unless it is shown to the satisfaction of the court that, despite the exercise of reasonable diligence by the party offering it, such evidence could not have been produced at the trial in the court below."

7. The provisions of the City of Monroe Code involved are Sections 10-3, 10-6, 10-7 and 10-27, pages 73, 74 and 81:

1. "Section 10-3. Assault—Simple.

"It shall be unlawful to commit an act of simple assault. The crime of simple assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery, committed without a dangerous weapon."

2. "Section 10-6. Battery—Simple.

"It shall be unlawful to commit a simple battery.

"Battery is the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.

"Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon."

3. "Section 10-7. Same—Aggravated.

"It shall be unlawful to commit an aggravated battery.

"Battery is the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.

"Aggravated battery is a battery committed with a dangerous weapon."

4. "Section 10-27.

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeable disturb or alarm the public:

"(1) Engaging in a fistic encounter; or

"(2) Using of any unnecessarily loud, offensive, or insulting language; or

"(3) Appearing in an intoxicated condition; or

"(4) Engaging in any act in a violent and tumultuous manner by three or more persons; or

"(5) Holding of an unlawful assembly; or

"(6) Interruption of any lawful assembly of people; or

"(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

STATEMENT.

Defendants were tried in the City Court of Monroe, Louisiana, on the 21st day of March, 1961. Troy B. Cade, Robert Douglas, Reacy Gaines, Willie Vantley and Nathan White were tried on charges of attempting to commit a battery, committing a battery and disturbing the peace. Luretha A. Cade and T. L. Lawson were tried on charges of attempting to commit a battery and disturbing the peace. Each defendant was found guilty and sentenced by the City Court, which sentence involved fines and compulsory jail sentences. (RT 40-41, 47.)[1] Defendants appealed the decision of the City Court to the Fourth Judicial District Court for Ouachita Parish, Louisiana, where the case was tried *de novo*. By consent the cases were consolidated for the purpose of the trial. (RT 47.) Petitioners in each case were tried on criminal information which stated their race. Each petitioner is of the Negro race and adheres to the religious faith of Islam and is commonly called and known as "Black Muslims." The date of the alleged offense on the part of each defendant was on Sunday, March 5, 1961. (RT 49-67.) At this time the defendants were at their religious temple, which temple was located at 1243 DeSiard Street, Monroe, Louisi-

[1] "RT" refers to the record on the pre-trial and post-trial motions and application for review thereof.

ana, for the purpose of worshipping in their religious faith of Islam. (TR 98-99.)[2]

"Q. Are you acquainted with this place up here at 1243 in question that has been talked about here on March 5th?

A. Yes, sir, I am.

Q. What do you know about that place?

A. 1243 DeSiard is the building that we rented from the A. F. and M. Masonic Lodge for our religious purposes.

Q. About when did you rent it for that purpose?

A. Approximately in January, 1961.

Q. How often do you have meetings up there?

A. Every Sunday and Monday night." (TR 98, 99.)

James C. Kelly, Chief of Police for the City of Monroe, Louisiana, along with other officers, went to these premises for the stated purpose of investigating this group of which the said Chief James C. Kelly had personal knowledge was subversive. (TR 39-40.) Chief James C. Kelly testified in part as follows:

"Q. Now do you remember I believe on March 21, 1961, when this question was propounded to you and this answer was given over there in the municipal court before Judge I believe Harper, 'What was your purpose in going to these premises as Chief of Police of the City of Monroe?' and your answer was 'I went there to investigate an organization which I

[2] "TR" refers to the trial record and application for review thereof.

have a personal knowledge that might well be subversive.' Now didn't you answer that?

Q. Wasn't that your answer Chief when that question was propounded to you?

A. I don't have the records, if you would let me see the records I'll check to see.

Q. Look at the bottom of that page and see.

A. The record shows that I testified to that, yes." (TR 39.)

The reasons for going to these premises were further explained:

"Q. Well that was the reason you did go there to investigate it because you had knowledge it was a subversive organization didn't you?

A. That was one of the reasons, yes.

Q. Well now what was the other reason?

A. The other reason was because we had information that there was to be a minister or a preacher or a teacher or so they described him to come in from Atlanta and we went there to see who this teacher was was the second reason.

Q. Well now who was that minister you had reason to believe would be there?

A. I don't recall." (TR 40.)

"Q. Now after you met opposition at this door, when you sent your Captain back to radio, why didn't you send him or why didn't you go and

get a warrant where you could get in there lawfully?

A. I don't know why I didn't, I just didn't." (TR 41.)

The Chief had no search warrant, no warrant of arrest or any other legal authority to enter the premises. Everything was peaceable and quiet when the officers arrived, according to his own statement. (TR 5-6.)

The fact that these officers had on previous occasions taken members of this group to jail is substantiated by the record as follows (TR 42-43):

"Q. Testimony has been brought out here concerning a previous visit to this same place, is that correct?

A. That's right.

Q. On this previous occasion were you denied admittance to this establishment?

A. I was not.

Q. How long were you there?

A. Oh I would say 20 to 30 minutes.

Q. When you were there for 20 to 30 minutes on this previous occasion were you inside or outside of the premises?

A. Inside.

Q. Were the defendants or any of them there on that occasion?

A. They were all there.

Q. On that previous—I believe you said that was on a sabbath too. Is that the time you testified a few minutes ago?

A. If you are referring to the 21st or 22nd of January, that is correct. It was on a Sunday.

Q. It was on a Sunday?

A. It was on a Sunday, yes.

Q. The date may be incorrect?

A. That's right.

Q. And it was in 1961?

A. In 1961, yes.

Q. Is that the time you said you brought four (4) of them down?

A. I believe that's right.

Q. You brought two and the other officer brought two?

A. To the best of my recollection that's right. I think that's right.

Q. What did you do that 30 minutes on that previous meeting you testified here in direct examination?

A. To attend the meeting.

Q. Sir?

A. To attend this meeting that they were going to have.

Q. To attend a meeting. Are you in the habit of attending negro church meetings?

A. Well not in the habit but I think I have a right to go to any of the meetings here that they have, yes, sir.

Q. Do you know anything about a statute prohibiting you from going in and sitting? A State statute?

A. Oh yes, I'm aware of these state statutes.

Q. I mean that prohibits you from going to colored churches and taking a part in a colored church?

A. I wasn't taking a part in any church.

Q. Going there to hear a sermon?

A. I don't quite follow you. I was speaking in the capacity as Chief of Police of the City of Monroe.

Q. Well now name me any other negro churches you have been to on the sabbath?

A. I've been to a lot of them.

Q. Well name the names.

A. Well I don't think it is necessary for me to name these churches I've been to.

Q. Well you say you have been to a lot of them, now you can't tell this Court of any church you have ever been—a negro church, Methodist or Baptist can you?

A. Yes, I can.

Q. Name us one.

A. I don't think I will.

Q. You don't want—you just refuse to answer?

A. I do. I refuse to answer it.

Q. On what grounds do you refuse to answer? On the Fifth Amendment or what?

A. I don't—on any amendment, I just refuse to answer the question.

Q. You just refuse to answer?
A. I do.

Q. For what reason?
A. I've got no reason. I just won't answer it, that's it.

Q. You just won't answer?
A. That's right.

THE COURT: If you know the answer you are required to answer it.
A. Judge, I just won't answer it, that's it." (TR 42-45.)

The officers parked their automobile in front of the premises while one of the officers knocked on the front door of the temple. After receiving no answer the officer returned to his automobile and waited until other members of this religious group arrived, at which time said officers attempted to enter behind them. It appears that the officers met opposition at this door, which was the front door of the building. After meeting this opposition the officers proceeded to the door at the rear of the building and, after the rear door was torn open, entered the building, where some fighting took place. The officers then and there seized several items of personal property and charged defendants with aggravated battery, attempting to commit a battery and disturbing the peace. These items of personal property and other evidence seized in connection with these arrests were introduced and received in evidence against the defendants

over their objections in both the City Court and the Fourth Judicial District Court of Louisiana, where the case was tried *de novo* to prove each charge against defendants. On the trial of the case petitioners sought to call as one of their witnesses one James Gaines. The prosecution raised an objection to this witness testifying in this case under the provisions of Section 36 of Article 7 of the Constitution of Louisiana. (TR 173.) *Supra* page 5.

The district judge sustained this objection and held that the witness could not testify under Section 36 of Article 7 of the Constitution of Louisiana. (TR 174.) The basis for this ruling was to the effect that Section 36 of Article 7 provides that no evidence is permissible on trial *de novo* that was not offered in the lower court. Defendants did except to this ruling and reserved a formal bill (TR 173-175) (RT 38), urging that defendants' rights under the Fourteenth Amendment were violated. After conviction, defendants filed a motion for a new trial and sought to call two witnesses, Walter Mines and James Greggs, in support of paragraph 15 of their motion for a new trial. (RT 47.) The prosecution objected to these witnesses, testifying again under Section 36 of Article 7 of the Constitution, which objection was sustained by the Court. Defendants did then and there object and reserved a formal bill. (RT 47.) The motion for a new trial was denied and defendants reserved a formal bill. (RT 47.) An application for writs of certiorari, mandamus and prohibition was filed with the Supreme Court of the State of Louisiana and denied. (RT 76.) An application for stay of execution for ninety (90) days was granted on May 28, 1962. (RT 82.)

HOW THE FEDERAL QUESTIONS ARE PRESENTED.

The federal questions sought to be reviewed here were raised in the court of first instance (the Fourth Judicial District Court for Ouachita Parish, Louisiana) on December 8, 1961, by petitioners' timely motion to quash the information. (RT 8.) In the motion to quash, petitioners averred, among other things, the following (RT 9-10):

> "6. That the affidavits charging defendants with committing a battery, attempting to commit a battery and disturbing the peace are defective for reason said charges have the effect upon conviction of denying defendants the right of freedom of religious worship as provided in Section 4 of Article 1 of the constitution of Louisiana and the first amendment to the constitution of the United States; will further deny defendants the right of peaceable assembly as provided in Section 5 of Article 1 of the constitution of the State of Louisiana and the first amendment to the constitution of the United States; will further deny defendants the right to be free from unreasonable searches and seizures as provided by Section 7 of Article 1 of the constitution of the State of Louisiana and the fourth amendment to the constitution of the United States. That the charge and conviction would further be in violation of the fourteenth amendment to the constitution of the United States. That defendants specially plead said statutes and laws in bar of conviction in these proceedings.

"7. That the affidavits charging defendants with disturbing the peace under Section 10-27 of the City of Monroe Code, Ordinance 3263, are defective for reasons said section is unconstitutional on its face, or in the alternative unconstitutional as used against these defendants for the following reasons:

"1. Said section is too vague and general to protect the State and Federal guarantees of freedom of religion, right of peaceable assembly and the right to be free from unreasonable searches and seizures.

"2. Paragraph 5 of said section is particularly unconstitutional as the section nor the code defines the 'Holding of an unlawful assembly.'

"3. That the section was used against these defendants to prevent them from exercising their right of freedom of religious worship and the right to peaceable assembly.

"8. That the affidavits charging defendants with committing a battery, attempting to commit a battery are defective in that no search warrant issued from proper authorities contrary to Louisiana Revised Statutes Title 15 Section 41 and Section 7 of Article 1 of the constitution of the State of Louisiana and amendment four of the constitution of the United States.

"9. That the seizures and arrests made in these cases violates the rights of defendants as guaranteed by the 14th amendment to the constitution of the United States."

The motion was argued, submitted and denied on March 23, 1962, to which ruling petitioners objected and reserved a formal bill and proceeded to trial. (RT 47.) At the close of the evidence for the prosecution on March 23, 1962, defendants filed a motion for a directed verdict of acquittal and, among other things, alleged (RT 21):

> "1. That it is clear that the evidence was obtained in violation of defendants' right of freedom of religious worship as provided in Article 1, Section 4 of the constitution of Louisiana and the first amendment to the constitution of the United States; and further in violation of defendants' right of peaceable assembly as provided in Article 1, Section 5 of the constitution of the State of Louisiana and the first amendment to the constitution of the United States; and further in violation of defendants' right to be free from unreasonable searches and seizures as provided in Article 1, Section 7 of the constitution of the State of Louisiana and the fourth amendment to the constitution of the United States.
>
> "2. That the evidence presented by the prosecution should not be received against defendants for reason the place of religious worship of defendants was entered without a search warrant contrary to Article 1, Section 7 of the constitution of the State of Louisiana and R. S. 15:41 of the State of Louisiana requiring a search warrant and also contrary to the constitution of the United States as provided in amendment 4 thereof providing that no warrant shall issue, but upon probable cause and supported by oath and particu-

larly describing the place to be searched and the persons or things to be seized.

"3. That a directed verdict of acquittal should be entered in favor of each defendant charged with attempting to commit a battery for the reason each affidavit charges a violation contrary to Section No. 10-3 of the City of Monroe Code. That Section No. 10-3 of said Code defines simple assault and reads as follows:

"'Sec. 10-3. Assault—Simple.

"'It shall be unlawful to commit an act of simple assault. The crime of simple assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery, committed without a dangerous weapon.'

"4. That no evidence at all has been introduced by the prosecution which would tend to support a conviction of attempting to commit a battery and the elements necessary to constitute such offense have not been proved.

"5. That a directed verdict of acquittal should be entered in favor of each defendant charged with disturbing the peace under Section 10-27 of the City of Monroe Code, Ordinance 3263, for reason said section is unconstitutional on its face, or in the alternative unconstitutional as used against these defendants for the following reasons:

"1. Said section is too vague and general to protect the State and Federal guarantees of free-

dom of religion, right of peaceable assembly and the right to be free from unreasonable searches and seizures.

"2. Paragraph 5 of said section is particularly unconstitutional as the section or the code defines the 'Holding of an unlawful assembly.'

"3. That the section was used against these defendants to prevent them from exercising their right of freedom of religious worship and the right to peaceable assembly.

"6. That no evidence at all has been introduced by the prosecution which would tend to support a conviction of disturbing the peace and the elements necessary to constitute such offense have not been proved.

"7. That a directed verdict of acquittal should be entered in favor of each defendant charged with committing a battery for the reason no valid, legal or admissible evidence has been received against the defendants which would tend to support a conviction of disturbing the peace.

"9. That a directed verdict of acquittal should be entered in favor of each defendant on each charge against each of them in these proceedings for the reason the seizures and arrests made in these cases violates the rights of defendants as guaranteed by the 14th amendment to the constitution of the United States, which amendment defendants specially pleads in bar of conviction in these proceedings."

This motion was argued and submitted and overruled by the Court, and to which ruling defendants objected and reserved a formal bill. (TR 97-98.) (RT 36.) After conviction, and on March 28, 1962, petitioners filed a motion for a new trial. (RT 14.) In this motion for a new trial petitioners urged the following:

> "1. That it is clear that the evidence was obtained in violation of defendants' right of freedom of religious worship as provided in Article 1, Section 4 of the constitution of Louisiana and the first amendment to the constitution of the United States; and further in violation of defendants' right of peaceable assembly as provided in Article 1, Section 5 of the constitution of the State of Louisiana and the first amendment to the constitution of the United States; and further in violation of defendants' right to be free from unreasonable searches and seizures as provided in Article 1, Section 7 of the constitution of the State of Louisiana and the fourth amendment to the constitution of the United States.
>
> "2. That the evidence presented by the prosecution should not be received against defendants for reason the place of religious worship of defendants was entered without a search warrant contrary to Article 1, Section 7 of the constitution of the State of Louisiana and R. S. 15:41 of the State of Louisiana requiring a search warrant and also contrary to the constitution of the United States as provided in amendment 4 thereof providing that no warrant shall issue, but upon probable cause and supported by oath and particularly de-

scribing the place to be searched and the persons or things to be seized.

"3. That a new trial should be granted in favor of each defendant convicted of attempting to commit a battery for the reason each affidavit charges a violation contrary to Section No. 10-3 of the City of Monroe Code. That Section No. 10-3 of said Code defines simple assault and reads as follows:

" 'Sec. 10-3. Assault—Simple.

" 'It shall be unlawful to commit an act of simple assault. The crime of simple assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery committed without a dangerous weapon.'

"4. That the crime of attempting to commit a battery is properly chargeable under Section 10-6 of the City of Monroe Code and said Section reads as follows:

" 'Sec. 10-6. Battery—Simple.

" 'It shall be unlawful to commit a simple battery.

" 'Battery is the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.

" 'Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon.'

"5. That no evidence at all has been introduced by the prosecution which would tend to support a conviction of attempting to commit a battery and the elements necessary to constitute such offense have not been proved.

"6. That no evidence at all has been introduced by the prosecution which would tend to support a conviction of disturbing the peace and the elements necessary to constitute such offense have not been proved.

"8. That no valid legal or admissible evidence has been received against the defendants which would tend to support a conviction of either disturbing the peace, attempting to commit a battery, or battery.

"10. That a new trial should further be ordered for the reason the seizures and arrests made in these cases violates the rights of defendants as guaranteed by the 14th amendment to the constitution of the United States, which amendment defendants specially plead in bar of conviction in these proceedings and in support of this motion for a new trial.

"11. That Section 10-27 of the City of Monroe Code, Ordinance 3263, is unconstitutional on its face, or in the alternative unconstitutional as used against these defendants for the following reasons:

"1. Said section is too vague and general to protect the State and Federal guarantees of free-

dom of religion, right of peaceable assembly and the right to be free from unreasonable searches and seizures.

"2. Paragraph 5 of said section is particularly unconstitutional as the section nor the code defines the 'Holding of an unlawful assembly.'

"3. That the section was used against these defendants to prevent them from exercising their right of freedom of religious worship and the right to peaceable assembly.

"That defendants specially plead the unconstitutionality of the above section of the City of Monroe Code, Ordinance Number 3263, in bar of conviction in these proceedings and in support of this motion for a new trial.

"13. That the ruling of the court refusing to hear the testimony of James Gaines on behalf of defendants, to which ruling defendants reserved a bill of exception show error committed to the prejudice of defendants.

"14. That the ruling of the court refusing to hear full testimony on the matter of the religious activities of defendants at 1243 DeSiard Street, Monroe, Louisiana, on March 5, 1961, to which ruling a bill of exception was reserved show error committed to the prejudice of defendants.

"15. That the ruling of the court limiting defendants' witnesses to those produced in the court below denied defendants their right to produce three witnesses in their defense, two of whom had

been subpoenaed for this purpose, to which ruling a bill of exception was reserved show error committed to the prejudice of defendants.

"17. That the ruling of court overruling the objection of defendants to receiving in evidence all exhibits of the City of Monroe on the basis that said exhibits and evidence had been illegally seized and for said reason inadmissible in evidence, to which ruling a bill of exception was reserved show error committed to the prejudice of defendants."

This motion for a new trial was taken up on April 19, 1962. Defendants offered testimony in support of their motion for a new trial and same was objected to by the City of Monroe, which objection was sustained by the Court. (RT 47.) Defendants did object to the ruling of the Court and reserved a formal bill. The motion for a new trial was then argued and overruled, and to which ruling defendants did except and reserved a formal bill. (RT 47.) On this same date defendants filed a motion in arrest of judgment and in said motion reurged all constitutional questions raised by defendants during the course of the trial. (RT 26.) This motion was taken up by the Court and was argued and overruled. Defendants did then and there except to the Court's ruling and reserved a formal bill. (RT 47.) The Court affirmed the sentences passed on each defendant and each cnarge in the City Court. (RT 47.) Defendants did then and there except in this ruling of the Court and reserved a formal bill. (RT 47.) Counsel for defendants did then and there

file notice of intention to apply for writs of certiorari, mandamus and prohibition to the Honorable Supreme Court of the State of Louisiana. (RT 44.) The return day was fixed by the Court at on or before May 4, 1962. (RT 46.) The Court signed a formal bill of exceptions on April 30, 1962. (RT 42.) Thereafter, petitioners timely filed their application with the Supreme Court of Louisiana alleging, among other things, the following:

"5. That the issues herein involved are as follows:

"1. Whether or not there is any evidence at all in the record to support the conviction of defendants?

"2. Whether or not any valid, legal or admissible evidence was received against defendants in this proceeding?

"3. Whether or not illegally seized evidence by City Police is admissible against defendants in this proceeding?

"4. Whether or not in trial de novo from City Court to District Court the District Attorney or the City Attorney is the proper party to represent the prosecution.

"5. Whether or not Section 36 of Article 7 of the constitution of Louisiana prohibits on trial de novo the use of a witness by defendant other than ones used on the trial below, and if so whether or not said article and section is unconstitutional as a violation of both the State and Federal constitutions?

"6. Whether or not as a matter of law the trial Judge must grant a motion for directed verdict of acquittal when there is no evidence at all which would tend to support a verdict of guilty?

"7. Whether or not City Police may provoke a disturbance and successfully prosecute defendants?

"8. Whether or not the conviction in these proceedings deprives defendants of equal protection of the law, due process of law and further violate their right to be free from unreasonable searches and seizures, the right to peaceable assembly and the right to freedom of religious worship as provided by the constitution of the State of Louisiana and the constitution of the United States?

"6. The questions of law involved in these proceedings would seem to be as follows:

"1. Does the affidavit charging each defendant with committing a battery meet the requirement of Section 10 of Article 1 of the constitution of Louisiana and the 6th amendment to the constitution of the United States?

"2. Should the charge of attempting to commit a battery be brought under Section Number 10-3 of the City of Monroe Code or Section Number 10-6 of the City of Monroe Code?

"3. Does the affidavit charging each defendant with disturbing the peace meet the require-

ment of Section 10 of Article 1 of the constitution of Louisiana and the 6th amendment to the constitution of the United States?

"4. Does the conviction of defendants have the effect of denying them the right of freedom of religious worship as provided in Section 4 of Article 1 of the constitution of Louisiana and the 1st amendment to the constitution of the United States and further deny defendants the right of peaceable assembly as provided in Section 5 of Article 1 of the constitution of Louisiana and the 1st amendment to the constitution of the United States as well as the right to be free from unreasonable searches and seizures pursuant to Section 7 of Article 1 of the constitution of Louisiana and the 4th and 14th amendments to the constitution of the United States?

"5. Is Section 10-27 of the City of Monroe Code, Ordinance Number 3263, unconstitutional as being too vague or in the alternative unconstitutional as used against defendants?

"7. That defendants assign the following errors made by the court below which errors operated to the prejudice of defendants:

"1. The court erred in refusing defendants' request to take testimony in support of their motion to quash.

"2. The court erred in overruling the motion for a directed verdict of acquittal.

"3. The court erred in overruling the motion for a new trial.

"4. The court erred in overruling the motion in arrest of judgment.

"5. That the court erred in refusing on cross-examination of witnesses for the prosecution questions concerning the religious activities of defendants.

"6. That the court erred in admitting City exhibits 2, 4, 5 and 6 in evidence against defendants.

"7. That the court erred in sustaining an objection on a question as to whether or not the Police Officers seized any personal property of defendants.

"8. That the court erred in refusing to hear testimony from Troy Cade as to what the Police Officers questioned him about after he came from the hospital.

"9. That the court erred in refusing to hear the testimony of James Gaines, witness called on behalf of defendants pursuant to Section 36 of Article 7 of the constitution of Louisiana.

"10. That the court erred in refusing to hear two witnesses, namely Walter Mines and James Greggs called by defendants in support of paragraph 15 of their motion for a new trial.

"8. That relators make a part of this application a true original duplicate copy of the following pleadings and papers, which are annexed and

attached hereto and made a part of this application and pleaded herein by reference, to-wit:

"1. Motion to quash.

"2. Motion for new trial.

"3. Motion for directed verdict of acquittal.

"4. Motion in arrest of judgment.

"5. Bill of exceptions.

"6. Notice of intention to apply for Writs.

"7. Certified copy of order of court fixing the return date of Writs with the Supreme Court.

"8. Minutes of the Court.

"9. Affidavits of charge against each defendant.

"10. Note of evidence on trial de novo—(one copy).

"11. Brief and citation of authorities. (RT 68.)"

The Supreme Court of Louisiana denied this application on May 18, 1962, stating (RT 76):

"Writs refused.

"The showing made in the application does not warrant the exercise of our supervisory jurisdiction."

REASONS FOR GRANTING THE WRIT.

I.

The decision below conflicts with decisions of this Court on important issues affecting federal constitutional rights:

A. The Decision Below Affirms a Criminal Conviction Based Upon Illegally Seized Evidence and the Illegal Entry of a Religious Temple and the Illegal Arrest of Petitioners and Therefore Conflicts With This Court's Decision in *Mapp v. Ohio*, 81 S. Ct. 1684 (1961).

The district Court on trial *de novo* found each petitioner guilty as charged and therefore affirmed the decision and sentence of the City Court. The Supreme Court of Louisiana denied application for writs of certiorari, mandamus and prohibition. The facts as shown by the record in this case are that on Sunday, March 5, 1961, petitioners were at their religious temple and that everything was peaceable and quiet when the police officers arrived. The officers had no warrant of arrest and no search warrant, but proceeded to force their way into the temple. After gaining entry into the temple they seized certain weapons, to-wit, sticks and boards designated in the trial of this case as City exhibits 2, 4, 5 and 6. (TR 96.) These exhibits were offered and accepted in evidence against the petitioner for the purpose of showing that they were weapons used to commit a battery and with which petitioners attempted to commit a battery. Timely objections were raised, but the exhibits were admitted in evidence over petitioners' objections. The record is barren of any evidence tending to show that the public was alarmed by anything that occurred at the temple. If there were a disturbance in the temple, the only ones disturbed were the police officers for the City of Monroe, Louisiana, and the petitioners who were arrested. If there were a disturbance in the temple, the police officers provoked the disturbance by their illegal

entry into the building. The record will show that Chief James C. Kelly admitted that everything was peaceable and quiet when he arrived. We submit that this fails to come within the wording of the City ordinance defining disturbing the peace, *supra* page 7. The Supreme Court of Louisiana did not find it convenient to re-examine the factual bases for the determination of guilt and for the determination of the facts surrounding the entry of the building, or the seizure of the City exhibits and their admittance in evidence against the petitioners. The Supreme Court of Louisiana in our judgment should have re-examined the factual basis in this respect under our serious contention and there was no evidence at all in the record which would tend to support the verdict of guilty. Petitioners urged in another way in substance this same point in paragraph 8 of their motion for a new trial, to-wit (RT 16):

> "8. That no valid, legal or admissible evidence has been received against the defendants which would tend to support a conviction of either disturbing the peace, attempting to commit a battery or battery."

Our position in the first place is that there was no evidence at all to support the charge of disturbing the peace, attempting to commit a battery, or battery. That any evidence that may be considered as supporting either charge was illegally obtained and therefore not admissible as evidence against the defendants under the decision of the *Mapp* case. We further urge that illegally obtained evidence is in substance and effect no evidence at all. The Supreme Court of Louisiana has

held many times that while it will not pass upon questions of fact, but when the contention is to the effect that there is no evidence at all to support the verdict of guilty a question of law is raised which the Supreme Court will decide. *State v. Gallin*, 129 So. (2d) 4, 241 La. 321. This Court will make its own independent examination of the records where facts and constructions are determinative of federal constitutional rights. *Napue v. Illinois*, 360 U. S. 264, 271, 272. The judgment below conflicts sharply with the law as the Court declared in the *Mapp* case and therefore a full hearing should be granted so that this Court may consider the grave constitutional issue posed by this conflict.

B. The Decision Below Affirms a Criminal Conviction Based Upon No Evidence of Guilt and Therefor Conflicts With This Court's Decision in *Thompson v. City of Louisville*, 362 U. S. 199.

In the *Thompson* case the petitioner had been convicted of loitering and disorderly conduct. It appears that petitioner had been waiting at a cafe alone about half an hour for a bus. He was charged with loitering and, when he was arrested, argued with the police, and for this reason charged with disorderly conduct. This Court held that the conviction was void in that it was based on no evidence and, therefore, violative of the due process clause of the Fourteenth Amendment. In this case petitioners were all at their religious temple for the purpose of engaging in their regular Sunday religious activities. The police officers attempted to enter these premises and finally did enter the premises through the rear door. The police officers had no warrant of arrest.

no search warrant or any other legal authority to be at these premises except the statement of James C. Kelly to the effect that he went there to investigate an organization that he had personal knowledge was subversive. Chief Kelly further indicated everything was peaceable and quiet when he arrived. This case is like the *Thompson* case in that there was no disturbance at all until the difficulty was provoked by the police officers. The provocation was without any legal or just cause whatsoever, and the conviction, if allowed to stand, would offend the due process clause of the Fourteenth Amendment in this case, as in the *Thompson* case. It further appears that petitioners here did not resist arrest, and even if the record shows that they did resist arrest the Supreme Court of Louisiana had the following to say in the case of *City of Monroe v. Duças, et al.*, 203 La. 974, 14 So. (2d) 781: "Every person may resist an unlawful arrest and may use such force as may be necessary."

C. Petitioners Were Convicted of a Crime Under the Provisions of a City Ordinance Which as Applied to Convict Them Is So Vague, Indefinite, and Uncertain as to Offend the Due Process Clause of the Fourteenth Amendment as Construed in Applicable Decisions of This Court.

The breach of the peace ordinance under which petitioners were charged with disturbing the peace were introduced into evidence on the trial of this case and are now of record in the district Court. The constitutionality of this statute was attacked for the first time in defendants' motion to quash (RT 10.) Again in the

motion for a new trial (RT 16), again in the motion for a directed verdict of acquittal (RT 22), again in the motion in arrest of judgment (RT 26) and again in our application for writs to the Supreme Court of Louisiana. (RT 4.) The section of the City ordinance of the City of Monroe involved is Section 10-27 of Ordinance Number 3263. We question this statute as being unconstitutional, as being too vague or in the alternative unconstitutional as used against the defendants. On the basis of being too vague the Supreme Court of Louisiana in the case of *State of Louisiana v. Lilly Christine, alias (Cat Girl)*, 239 La. 259, 118 So. (2d) 403, had this to say:

> "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute and that defines the act denounced with such precision that persons sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

The Court further said the following:

> "A criminal statute to be valid must define the offense so specifically or accurately that any reader having ordinary intelligence will know when or whether his conduct is on the one side or the other side of the border line between that which is and that which is not denounced as an offense against the law."

The City ordinance in question prohibits the "commission of any other act in such a manner as to unreasonably disturb or alarm the public." We submit that this statute does not meet the test as pronounced in a case of *State of Louisiana v. Lilly Christine, alias (Cat Girl)*, 239 La. 259, 118 So. (2d) 403. In the case of *State v. Sanford*, 203 La. 961, 14 So. (2d) 778 (1943), the Supreme Court of Louisiana held the following: "It is well settled that no act of conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute." This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As the Court held in *Lanzetta v. New Jersey*, 306 U. S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

The ordinance is also unconstitutional as used against petitioners. It has been used to abridge their right peaceably to assemble as provided in the First Amendment to the Constitution of the United States. This is not permissible under the Constitution of the State of Louisiana. In *State of Louisiana v. Bulot, et al.*, 175 La. 21, 142 So. 787, the Supreme Court of Louisiana considered a case where the police officers were authorized and

directed by statute to go to a place of "unlawful assembly" and suppress them. The Court proposed this question on page 789. But how and by what right are they to determine that such assembly is "unlawful" or for an "unlawful purpose," if it be in its nature peaceable? The Court answers the question by saying: "Manifestly no peace officer can or should be vested with authority to say that any peaceable assembly is or is not lawful or for a lawful or an unlawful purpose. That is necessarily a judicial function." Accordingly, the Court held that the right of people peaceably to assemble cannot be abridged or interfered with and cited Article 1, Section 5, of the Louisiana Constitution of 1921. In this case the assembly was peaceable in its nature and the peaceable nature of the assembly was attested to by the arresting officers. The effect of the conduct of the officers in this case if allowed to stand will be to abridge this right as guaranteed by both the Constitution of the United States as well as the Constitution of the State of Louisiana. Also, if this type of raid on a religious temple is sanctioned by the courts, it will seriously affect the right of freedom of religious worship as provided by the First Amendment to the Constitution of the United States. The right of peaceable assembly is absolutely necessary to the free exercise of one's religious belief.

CONCLUSION.

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

It is further submitted that a formal writ should issue directing the full and complete record in connection with this case be sent up for the purpose of examination.

Respectfully submitted,

JAMES R. VENABLE,
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By: JAMES SHARP, JR.,
Attorneys for Petitioners.

APPENDIX "A"

CITY OF MONROE
VERSUS:
TROY B. CADE
LURETHA A. CADE
ROBERT DOUGLAS
REACY GAINES
T. L. LAWSON
ROBERT MENNYWEATHER
WILLIE VANTLEY
NATHAN WHITE

STATE OF LOUISIANA
PARISH OF OUACHITA
CITY COURT OF THE
CITY OF MONROE

THESE PROSECUTIONS grow out of an attempt of the Monroe Police to arrest the eight defendants at bar for misdemeanors committed in presence of the police, as denounced by law, ordinances of the City of Monroe, Louisiana, as follows, to-wit:

NAME OF DEFENDANT, CHARGE

Troy B. Cade c/m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Troy B. Cade c/m

2. Did intentionally use violence in committing a battery upon the person of another, namely, J. C. Kelly, Howard Williams, committed with a dangerous weapon, to-wit, a wooden stool and chair.

Troy B. Cade c/m

3. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, J. C. Kelly and Jimmy Deal, Howard Williams, L. P. Smith and J. E. McMullen, and intentionally placing said persons in reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, wooden chairs and stool.

Luretha A. Cade c/f

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Luretha A. Cade c/f

2. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, David Antley and J. C. Bryan, and intentionally placing said persons in reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, a letter opener.

Robert Douglas c/m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Robert Douglas c/m

2. Did intentionally use violence in committing a battery upon the person of another, namely,

Jimmy Deal, J. C. Kelly and L. P. Smith, committed with a dangerous weapon, to-wit, a wooden club 2"x2".

Robert Douglas c m

3. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, Jimmy Deal, L. P. Smith, J. C. Kelly and Howard Williams, and intentionally placing said persons in reasonable apprehension of receiving a battery committed with a dangerous weapon, to-wit, wooden clubs, chairs and stools.

Reacy Gaines c m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Reacy Gaines c m

2. Did intentionally use violence in committing a battery upon the person of another, namely, Jimmy Deal, J. C. Kelly and J. E. McMullen, committed with a dangerous weapon, to-wit, a wooden board.

Reacy Gaines c m

3. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, Jimmy Deal, J. C. Kelly, L. P. Smith, Howard Williams, and intentionally placing said persons in reasonable apprehension of receiving a battery, committed with a dangerous

weapon, to-wit, a wooden club 2x2 window frame.

T. L. Lawson c/m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

T. L. Lawson c/m

2. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, L. P. Smith, J. C. Kelly, Jimmy Deal, Howard Williams, and intentionally placing said persons in a reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, wooden clubs, stools and chairs.

Robert Mennyweather c/m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Robert Mennyweather c/m

2. Did intentionally use violence in committing a battery upon the person of another, namely, Jimmy Deal, L. P. Smith, committed with a dangerous weapon, to-wit, a wooden board.

Robert Mennyweather c/m

3. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, Jimmy Deal, L. P. Smith, J. C. Kelly, Howard Williams, and intentionally placing said

persons in reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, a wooden club 2x6 (board), stools.

Willie Vantley c m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Willie Vantley c m

2. Did intentionally use violence in committing a battery upon the person of another, namely, J. C. Kelly, committed with a dangerous weapon, to-wit, a wooden club.

Willie Vantley c m

3. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, J. C. Kelly, Jimmy Deal, L. P. Smith, Howard Williams, and intentionally placing said persons in reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, wooden clubs, chairs and stools.

Nathan White c m

1. Did use unnecessarily loud, offensive or insulting language in a manner as would foreseeably disturb or alarm the public.

Nathan White c m

2. Did intentionally use violence in attempting to commit a battery upon the person of another, namely, L. P. Smith, J. C. Kelly, Jimmy Deal, Howard Williams, and intentionally placing

said persons in reasonable apprehension of receiving a battery, committed with a dangerous weapon, to-wit, wooden stools, chairs, sticks.

Nathan White c/m

3. Did intentionally use violence in committing a battery upon the person of another, namely, James Deal, committed with a dangerous weapon, to-wit, a wooden Coca Cola case.

Now how did all this get in motion, and what furnished the momentum to prolong it? Let us look at the picture.

At the outset, we who are law-abiding citizens must realize that Chief James C. Kelly is the Guardian and Protector of public life, limb, and property within the corporate limits of the City of Monroe. His is a great responsibility; his is sometimes a task of herculean proportions. Certainly it was so on the afternoon of Sunday, March 5, 1961.

Prior to the date in question, Chief Kelly, in the capacity just portrayed, and within the scope of his legal authority as Chief of Police of the City of Monroe, had serious reason to be suspicious of the newly arrived cult in our midst, known as the Islams. In his quest for information and facts, not wishing to make rash judgment or take premature, unwarranted action, Chief Kelly, prior to March 5th, had several interviews with members of the cult. He had even visited with the cult in its established meeting place and there had been peaceably received and from whence he peaceably departed. In the course of his continued investigation, he still sought more factual infor-

mation about the behavior of the membership. So on the date in question, March 5, 1961, the Chief, accompanied by Captain J. E. McMullen, one of the department's oldest, most reliable and respected of cers, went to the meeting place at Municipal number 1243 DeSiard Street, in the City of Monroe.

On arrival at the meeting place, the officers beheld a large, imposing public sign posted on the front of the meeting place, inscribed with the U. S. flag, to effect that Muhammad's Temple of Islam was conducting their service (for picture see Exhibit City #1), setting forth the day of service (Sunday), and the time, 2:00 O'Clock P. M. The sign, to all intents and purposes, being capable of but one interpretation—an open invitation to the public at large to come to the service within and meet with the membership. As can be seen by reference to the photograph the sign bore not a scintilla of reference to restrictions, prohibitions or prerequisites as to any entrant, either as to race, color or religion. It was much like a good old-fashioned Baptist-Methodist, "Come One, Come ALL" invitation. Naturally, having on a previous occasion entered that same meeting place and having met with the group in a peaceable atmosphere, it was farthest from Chief Kelly's mind that within the portals of this alleged House of Worship there awaited him and Captain McMullen a rude awakening of hidden violence of serious proportions. It is self-evident that Chief Kelly went to the meeting with no thought of provoking trouble; self-evident because had he entertained such a notion, it would have been sheer folly, senseless and suicidal to take with him just one police officer when he well knew the meeting had a potentiality of 50 or more negroes in attend-

ance, and especially true is this in light of the fact that the Chief had at his instant beck and call a well-trained police detail of over 60 men and an additional organization of 150 volunteer auxiliary policemen who stand ready on emergency call. Therefore, any idea that Chief Kelly went to the meeting for the purpose of making trouble is thoroughly dispelled, and the fact well established that he went there on a peaceable mission to gain further facts and information, either to substantiate the ugly reports received by him as to the behavior of the membership or to repudiate those reports as unfounded and untrue.

Chief Kelly and Captain McMullen arrived at the meeting place evidently earlier than the organization was willing to admit them, or a preconceived plan was to oust them physically on seeking admission. Captain McMullen knocked on the front door of the meeting place, which door is on the ground floor and leading to DeSiard Street, located in the 1200 block thereof in a predominantly negro business section of that street. Getting no response to his unobtrusive knocking at the front door, and because it was raining, Captain McMullen retired to the police car parked at the curb in which sat Chief Kelly. Very shortly thereafter, some negro people advanced from the sidewalk towards the door, entering the meeting room, whereupon Chief Kelly and Captain McMullen followed them through the doorway, but the instant they reached the meeting room at the entrance door, both were met by unannounced physical violence and bodily evicted from the room, without prior warning or advice not to enter the room, nor warning to leave the room prior to physical eviction. This physical, unannounced laying of violent hands on these officers, constituted the crime of simple battery under

the ordinance of the City of Monroe. It must be kept in mind that Chief Kelly and Captain McMullen entered at the front door of the building peaceably and without force, threats or coercion. Other officers came in response to an emergency call dispatched by Captain McMullen by radio after the forcible eviction of himself and Chief Kelly.

Chief Kelly needed no search warrant, needed no arrest warrant, to peaceably visit that public meeting which was open to all comers (witness the public invitation of the outside sign). Every arrest made by the officers was consequent to misdemeanors committed in their sight and presence and under the laws of the State of Louisiana and ordinances of the City of Monroe, they were empowered to make such arrests without warrant, and the articles these officers brought to police headquarters as evidence was secured by them in making arrests for misdemeanors committed in their presence and have been utilized as evidence in the charges now before this Court. Therefore, this Court sees no requirement for either search warrant or arrest warrant at any stage of these crimes, that is to say, arrests made of persons for committing misdemeanors in the presence of the arresting officers, and the taking of material evidence from the scene of the commission of the misdemeanors. If a forcible entry had been made at either door, this would be different, but at both doors it was a truly "Open Sesame" proposition—they walked in the front door along with other people going to the meeting, and they knocked at the back door to gain peaceable admittance, when it suddenly flew open from inside manipulation, and simultaneously through this sudden opening came the barrage of missiles;

chairs, stools, soft drink case, bricks, sticks, etc., etc. By the time Chief Kelly got to the back door (a double-door entrance) and knocked on it for admittance a few times, other officers radioed for began to arrive, when suddenly this door flew open, as aforesaid, and instantly through the door opening missiles of varying descriptions were hurled out by defendants, some striking the officers. Chief Kelly pleaded vainly time after time with defendants to desist and lay down their weapons, but to no avail. His entreaty was only met by derisive yells of, "Kill the White Devils, Kill the White Devils."

A misdemeanor had been committed at the front door when Chief Kelly and Captain McMullen were unceremoniously, without prior warning or admonishment to leave the premises, forcibly seized and evicted from the room. In the Louisiana law and ordinance of the City of Monroe, this amounts to simple battery on the persons of both officers.

The next misdemeanors were committed when defendants hurled the missiles out the back door, which acts, without the missiles finding their targets, amounted to an attempt to commit battery with a dangerous weapon, a misdemeanor under the ordinance of the City of Monroe herein invoked by the City, but if the missiles found target —struck any person—the act constitutes battery with a dangerous weapon, also a misdemeanor under the City ordinance.

Pandemonium broke out inside the meeting room, loud yells and cries, "Kill the White Devils, Kill the White Devils" rang out and consequent confusion and

loud noises, amounted to a disturbance of the peace that could foreseeably alarm and disturb the public, in which, according to the testimony, all defendants indulged and participated, and were each guilty as charged.

After gaining admission to the room from the back door, without use of violence or force of any degree by the officers, as aforesaid, the officers sought to place the misdemeanants under arrest, whereupon a battle royal of offensive physical violence and resistance by all defendants ensued, in which participants on both sides were physically injured

I have carefully studied the testimony and find that each defendant has been fully identified and connected specifically with the acts with which he or she is specifically charged, and for this reason the Court finds each defendant guilty as charged before this Court, and remands them for sentencing according to law.

This Court is well and favorably acquainted with all the officers taking part in this affair, including Chief Kelly. All of them, to a man, enjoy the respect and confidence of the entire City and of this Court, and it has been a pleasure to have them in my Court in the discharge of their official duties, most of them for several years. Each is a Christian gentleman of unquestioned character and integrity, and over the years of my official contact with them there has never been naught against either, as to dishonorable conduct. Knowing these gentlemen as I do, I know full well that neither would deliberately or maliciously harm a hair of the heads or shed a drop of blood of either of the defendants, except in the necessary

discharge of their official, lawful duties, or in the necessary defense of themselves or others entitled by law to their protection. In evidence of this fact, the participating officers were all armed with the usual sidearms of a police officer, but not a single shot was fired, although the officers were being assaulted with deadly weapons, ranging from pieces of 2"x2"x3' to 1"x4"x6', sharp, steel letter opener, stools, chairs, etc. Many citizens of Monroe can recall the day when Monroe officers confronted with much less provocation would have shot up this octet of defendants posthaste, and this Court feels these officers are due public thanks and commendation for a rare display of self-control, restraint and tolerance in a desperate situation seldom encountered in police annals. And I also know that each of these gentlemen feels as this Court does, that every man has the right to worship as his conscience dictates, whether it be the God we worship or otherwise, but likewise understand their obligation and legal right as peace officers to inquire into any extra-curricular behavior of any man, or organization that may reasonably be believed to use the cloak of religious worship to conceal unlawful acts.

THUS RENDERED in Open Court, this 4th day of April, A. D. 1961.

W. M. HARPER,
Judge.

APPENDIX "B"

I. The first amendment to the constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

II. The fourth amendment to the constitution of the United States:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

III. The fifth amendment to the constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of

life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

IV. The sixth amendment to the constitution of the United States:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

VII. The fourteenth amendment to the constitution of the United States:
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.